

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 06-4017-01-CR-C-NKL
	)	
JEFFREY M. VERNACE,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

Defendant Jeffrey M. Vernace is charged with use of an interstate facility to attempt to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b).<sup>1</sup>

On April 28, 2006, defendant filed a motion to dismiss the indictment due to legal impossibility. Defendant states the “minor” was actually an adult law enforcement officer. The Government filed a response in opposition on May 15, 2006, and a conference was held on defendant’s motion on June 28, 2006.

The issues in this case are virtually identical to those raised in United States v. Helder, No. 05-3387, slip op. (8<sup>th</sup> Cir. June 26, 2006), in which the court held that the crime of attempting to entice a minor to engage in sexual activity does not require that the intended victim be an actual minor. Thus, the doctrine of impossibility does not bar the conviction of the defendant in this case.

IT IS, THEREFORE, RECOMMENDED that defendant Jeffrey M. Vernace’s motion to dismiss be denied [22].

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within ten (10) days. If additional time is needed, a motion for an extension of time must be filed within ten days. The motion should state the reasons for the request. See Nash v. Black, 781 F.2d 665, 667 (8th Cir. 1986) (citing Thomas v. Arn, 474 U.S. 140 (1985));

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<sup>1</sup>This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and W.D. Mo. R. 22.

Messimer v. Lockhart, 702 F.2d 729 (8th Cir. 1983). Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this 30<sup>th</sup> day of June, 2006, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX  
United States Magistrate Judge